

violence to the language of either. In my opinion section 300 means exactly what it says, that is that when an accused person has been acquitted by a Sessions or Magistrates' Court there shall be no appeal except by the Public Prosecutor, and section 302 makes it incumbent upon the Public Prosecutor if he is minded to appeal in such circumstances to lodge his notice of appeal within 10 days from the time of the order of acquittal and otherwise comply with the provisions of that section.

In England there is no provision for appeal against acquittal except under certain express statutory provisions. An appeal against acquittal is an extraordinary remedy and the right to appeal against acquittal is deliberately confined to the Public Prosecutor in order to protect the prisoner and in order to prevent personal vindictiveness from seeking to call in question a judgment of acquittal by way of appeal. It is clearly the intention of the legislature that there should not ordinarily be interference except in cases where there has been a miscarriage of justice so serious that the Public Prosecutor considers that there ought to be an appeal. (See *Mallal's Criminal Procedure*, 4th edition, page 452).

It is, however, necessary for me to consider what action I should take, if any, on revision as there is no doubt about the jurisdiction of this Court either upon an application of a private individual or when the case is referred to it by a Magistrate that this Court can interfere by way of revision under the provisions of section 322 of the Criminal Procedure Code. In such cases if the Public Prosecutor has not preferred an appeal under section 300 the High Court ought not to interfere under section 322. It should only exercise revisional powers in exceptional cases when there has been a denial of the right of a fair trial or it is urgently demanded in the interests of public justice. In my opinion the legislature does not intend that a private party shall secure by an application in revision a right which is reserved for the Public Prosecutor only. (See *Mandal v. Mandal* ⁽¹⁾, *Rai v. Dass* ⁽²⁾ and *Mallal's Criminal Procedure*, 3rd edition, page 379).

In my view this is not a case in which I ought to interfere and accordingly there will be no order on the revision.

No order on the revision.

A MEE LIAN CO. v. PUBLIC PROSECUTOR

[A. Cr. J. (Adams J.) December 19, 1961]

[Muar — Criminal Appeal No. 71 of 1961]

Criminal Procedure — Charge — Not a body corporate — Necessity of drafting correct charges against the correct person and of proving to the satisfaction of the Court all ingredients of the charge — Duty of Court to see that the charge is properly drawn at the time it is read and explained to the defendant.

CRIMINAL APPEAL.

R. Ramason for the appellant.

Hamzah bin Dato Abu Samah (Deputy Public Prosecutor) for the respondent.

Adams J.: This was an appeal by the appellant against the conviction under section 13(i) of the Rubber Dealers Enactment No. 65 of 1935, Laws of Johore, by the learned Magistrate Tuan Syed Hussain Jamallulil. The appellant was charged as follows:

"Mee Lian Company (by manager Hua Kang Lee)
113 Main Road, Yong Peng.

Y. Peng Rpt.241/61.

That you on 19.6.61 at about 3.00 p.m. at premises No. 113, Main Road, Yong Peng, in the State of Johore, being the licensed Rubber Dealer did purchase 73 katties of rubber sheets from one Adnan bin Omar without any written authority delivered to you by the vendor for the sale thereof, and that you have thereby committed an offence under section 13(i) and punishable under section 18 of the Rubber Dealers Enactment No. 65/35."

The Deputy Public Prosecutor did not support the conviction because the prosecution failed to prove the main ingredient of the charge, namely, that the appellant was a licensed rubber dealer.

I would like to point out however that the person to be charged in this case should have been Hua Kang Lee and not the Mee Lian Company which is not a body corporate. I must yet again draw the attention of Prosecuting Officers to the necessity of drafting correct charges against the correct person and also of proving to the satisfaction of the Court all the ingredients of the charge. Finally, it is the duty of the Court to see that the charge is properly drawn at the time it is read and explained to the defendant. This clearly could not have been done in this case.

The appeal must be allowed and the fine repaid.

Appeal allowed.